

HOUSE BILL NO. 542

INTRODUCED BY FRANKLIN, BECKER, BRUEGGEMAN, COONEY, FRITZ, GILLAN, KEENAN,
KITZENBERG, LEWIS, MOOD, ROBERTS, D. RYAN, SQUIRES, STAPLETON, TESTER, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "OCCUPATIONAL THERAPY" BY
MODIFYING THE DESCRIPTION OF THE TYPE OF INDIVIDUAL FOR WHOM OCCUPATIONAL THERAPY
IS INTENDED AND BY MODIFYING THE TYPE OF INTERVENTIONS THAT ARE COVERED BY THE
DEFINITION OF OCCUPATIONAL THERAPY; DEFINING "TOPICAL MEDICATIONS"; REVISING
OCCUPATIONAL THERAPY TECHNIQUES INVOLVING SOUND OR ELECTRICAL PHYSICAL AGENT
MODALITY DEVICES AND THE EDUCATIONAL REQUIREMENTS FOR THE USE OF THE TECHNIQUES;
PROVIDING FOR THE APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATIONS; PROVIDING
FOR THE ADOPTION OF PROTOCOLS WITH RESPECT TO TOPICAL MEDICATIONS; AND AMENDING
SECTIONS 37-24-103 AND 37-24-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-24-103, MCA, is amended to read:

"37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1749.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of ~~the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association~~ the national board for certification in occupational therapy, inc., and adopted by the board.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the THERAPEUTIC use of purposeful goal-directed activities ~~activity~~ and

1 interventions to achieve functional outcomes to maximize the independence and the maintenance of health of
2 an individual who is limited by ~~physical injury or illness, psychosocial dysfunction, mental illness, developmental~~
3 ~~or learning disability, the aging process, cognitive impairment, or an adverse environmental condition~~ disease
4 or disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability
5 to function independently in daily life roles. The practice encompasses evaluation, assessment, treatment, and
6 consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological,
7 physiological, psychological, OR neurological, or orthopedic processes. Occupational therapy services may be
8 provided individually, in groups, or through social systems. Occupational therapy interventions include but are
9 not limited to:

10 (a) ~~teaching daily living skills~~ evaluating, developing, improving, sustaining, or restoring skills in activities
11 of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure
12 activities;

13 (b) developing perceptual-motor skills and sensory integrative functioning;

14 (c) developing play skills and leisure capacities and enhancing educational performance skills;

15 (d) designing, fabricating, or applying ~~splints or selective adaptive equipment and training in the use~~
16 ~~of upper extremity prosthetics or upper extremity orthotic or prosthetic devices, applying and training in the use~~
17 of assistive technology, and training in the use of orthotic and prosthetic devices;

18 (e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical
19 components of performance;

20 (f) providing assessment and evaluation, including the use of skilled observation or the administration
21 and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational
22 therapy services;

23 (g) ~~adapting environments for the disabled, including assistive technology, such as environmental~~
24 ~~controls, wheelchair modifications, and positioning~~ adaptation of task, process, or the environment, as well as
25 teaching of compensatory techniques, in order to enhance performance;

26 (h) developing feeding and swallowing skills;

27 (i) enhancing and assessing work performance and work readiness through occupational therapy
28 intervention, including education and instruction, activities to increase and improve general work behavior and
29 skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported
30 employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) ~~employing application of physical agent modalities, as defined in this section, as an adjunct to or in preparation for engagement in occupations~~ PURPOSEFUL GOAL-DIRECTED ACTIVITY; and

(l) promoting health and wellness;

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter and who works under the general supervision of an occupational therapist.

~~(7)~~(8) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

~~(8)~~(9) "Purposeful goal-directed activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

(10) "Topical medications" means medications applied locally to the skin and includes only medications listed in [section 4(2)] for which a prescription is required under state or federal law."

Section 2. Section 37-24-106, MCA, is amended to read:

"37-24-106. Use of sound and electrical physical agent modalities. ~~A (1) EXCEPT AS PROVIDED IN~~

~~SUBSECTION (2),~~ A person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

~~(1)(A)~~ is licensed under this chapter;

~~(2)(B)~~ limits application of sound and electrical physical agent modalities to the shoulder, arm, elbow, forearm, wrist, or hand to restore and enhance hand and UPPER EXTREMITY function; and

~~(3)(a)(C)~~ (I) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

~~(b)(II)~~ has successfully completed ~~400~~ 20 hours of instruction or training and five proctored treatments with UNDER THE DIRECT SUPERVISION OF a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and 5 proctored treatments with UNDER THE DIRECT SUPERVISION OF a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

(2) A CERTIFIED OCCUPATIONAL THERAPY ASSISTANT WHO WORKS UNDER THE DIRECT SUPERVISION OF A QUALIFIED OCCUPATIONAL THERAPIST MAY APPLY DEEP PHYSICAL AGENT MODALITIES TO THE SHOULDER, ARM, ELBOW, FOREARM, WRIST, AND HAND."

NEW SECTION. Section 3. Use of occupational therapy techniques involving topical medications. A person may not utilize occupational therapy techniques involving topical medications as described in [section 4] unless the person has successfully completed the following hours of instruction in addition to those provided for in 37-24-106:

(1) 5 hours of instruction or training in pharmacology as it pertains to topical medications listed in [section 4(2)];

(2) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(3) (a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical

1 practitioner; or

2 (b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical
3 practitioner.

4
5 **NEW SECTION. Section 4. Application and administration of topical medications -- prescription,**
6 **purchasing, and recordkeeping requirements.** (1) A licensed occupational therapist who meets the
7 requirements of 37-24-106 may apply or administer topical medications by:

8 (a) direct application;

9 (b) iontophoresis, a process in which topical medications are applied through the use of electricity; or

10 (c) phonophoresis, a process in which topical medications are applied through the use of ultrasound.

11 (2) A licensed occupational therapist may apply or administer the following topical medications:

12 (a) bactericidal agents;

13 (b) debriding agents;

14 (c) anesthetic agents;

15 (d) anti-inflammatory agents;

16 (e) antispasmodic agents; and

17 (f) adrenocortico-steroids.

18 (3) (a) Topical medications applied or administered by a licensed occupational therapist must be
19 prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe
20 topical medications and must be purchased from a pharmacy certified under 37-7-321.

21 (b) Topical medications dispensed under this section must comply with packaging and labeling
22 guidelines developed by the board of pharmacy under Title 37, chapter 7.

23 (4) A licensed occupational therapist who applies or administers topical medications shall keep
24 appropriate records with respect to those medications.

25
26 **NEW SECTION. Section 5. Board adoption of protocols.** The board, in consultation with the board
27 of medical examiners and the board of pharmacy, shall adopt written protocols for each class of topical
28 medication listed in [section 4(2)] for which a prescription is required by state or federal law. Protocols must
29 include a description of each topical medication, its actions, indications, and contraindications, and the proper
30 procedure and technique for its application or administration.

NEW SECTION. **Section 6. Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 24, part 1, and the provisions of Title 37, chapter 24, part 1, apply to [sections 3 through 5].

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